

cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

(Deft Memo. Supp. Dismiss/Stay, Exh. B at 9). The policy also provides that no suit may be filed unless “[t]here has been full compliance with all of the terms of this Coverage Part.” (Deft Memo. Supp. Dismiss/Stay Exh. C at 1).

Missouri courts have held that appraisal provisions in insurance policies are binding and enforceable. See, e.g., Lance v. Royal Ins. Co., 259 S.W. 535, 535 (Mo.Ct.App. 1924) (“A provision in an insurance policy for the amount of the loss to be ascertained by appraisers in case of disagreement in relation thereto is binding and enforceable, and must be complied with before a right of action accrues to the insured.”); Williamson v. Liverpool & London & Globe Ins. Co., 122 F. 59, 62 (8th Cir. 1903) (“Our conclusion is that an insurance policy which authorizes the appraisers, in case of a disagreement as to the amount of the loss, to estimate and appraise the loss, empowers them to determine whether or not the loss is total, as well as to determine what the amount of the loss is in case they find it to be partial.”).

Given the agreement in the Policy to submit to appraisal, the Court entered an Order on April 28, 2010, staying the instant cause until Defendant completed the appraisal process.

In the Motion for Lifting of Limited Stay and Selection of Umpire, Defendant apprises the Court that the appraiser made an offer of settlement to Plaintiff on May 4, 2010 and to date, Plaintiff has neither responded to the offer or rejected the offer of settlement. (Exh. A, Provencher Aff. at ¶ 2). Accordingly, the parties have been unable to reach a settlement. Thereafter the appraiser suggested potential umpires to Plaintiff to complete the appraisal process, but he has not received a

response from Plaintiff or its appraiser regarding the selection of the suggested umpires. (Id. at ¶ 3). Plaintiff has not filed any opposition or responsive pleading to Defendant's Motion for Lifting Stay and Selection of Umpire. Accordingly,

IT IS HEREBY ORDERED that Defendant Pennsylvania Lumbermens Mutual Insurance Company's Motion for Lifting of Limited Stay and Selection of Umpire (Docket No. 24) is GRANTED and the stay entered on April 28, 2010 is lifted for the limited purpose of selecting an umpire.

IT IS FURTHER ORDERED that the Court designates the Honorable Stephen Limbaugh as the umpire. The parties shall notify the Court within seven days of completion of the appraisal process.

Dated this 2nd day of June, 2010.

/s/Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE